SINGLE BENCH (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W. P. No.4715/2005

PETITIONER

Anupam Kumar Minz
Aged about 19 Years
S/O Late Shri Anukaran Minz R/O Kanya
Shiksha Parisar, Ambikapur District
Sarguja (Chhattisgarh)

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through the Secretary
Department of Health Medical Education
& Family Welfare D.K.S. Bhawan,
Mantralaya, Raipur (Chhattisgarh)

2. Director
Medical Education
D.K.S. Bhawan, Mantralaya
Raipur (Chhattisgarh)

3. Dean
Chhattisgarh Institute of Medical Sciences
(CIMS) Bilaspur (Chhattisgarh)

4. Guru Ghasidas Vishwavidyalaya through
the Vice Chancellor Bilaspur
(Chhattisgarh)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS TO MANDAMUS AND CERTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:-

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 4315/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28.9.2005 Shri Rahul Jha, Advocate for the petitioner. Shri Sandeep Dubey, Govt. Adv. for respondent Nos.1 & 2. Shri Manindra Shrivastava, Sr. Advocate with Shri Amrito Das, Advocate for respondent Nos.3 & 4. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India being aggrieved by the action of the respondents for not giving admission to the petitioner in M.B.B.S. course, 2005-06 against the disabled/physical handicapped quota seat. The case of the petitioner is that he appeared in the Pre-Medical Test Examination conducted by the respondents-State for admission in M.B.B.S. course for the academic session 2005-06. The petitioner secured 2757th position in the merit list. The petitioner applied for admission against physically handicapped/disabled quota candidate seat meant for Scheduled Tribes (ST), as in view of the provisions of Section 39 of The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 the respondents are required to reserve 3% seats for candidates suffering with disabilities or physically handicapped. Though the petitioner has secured 2757th position in the physically	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....WP 4715/05.... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश --2--	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

handicapped/disabled quota, but he was placed at Sr. No.2 in the physically handicapped quota seat meant for Scheduled Tribes candidates. However, the petitioner has not been given admission either in the Pt. Jawaharlal Nehru Medical College, Raipur or in the Chhattisgarh Institute of Medical Sciences, Bilaspur (CIMS) though he is entitled for the admission. Therefore, respondents may be directed to consider the case of the petitioner for admission in the M.B.B.S. course.

Return has been filed on behalf of respondent Nos.3 & 4.

I have heard learned counsel for the parties.

Learned counsel for the petitioner Shri Jha argued that the petitioner appeared in the PMT examination, 2005 as a physically handicapped/disabled candidate of Scheduled Tribe and so far in the CIMS no physically handicapped candidate of Scheduled Tribe has been admitted, therefore, the petitioner is entitled for the admission in M.B.B.S. course.

On the other hand, learned Sr. Counsel for respondent Nos.3 & 4 Shri Shrivastava argued that there are number of candidates belonging to Scheduled Tribe physically handicapped/disabled quota above the petitioner in the merit list, therefore, the petitioner is not entitled for admission. He further argued that only one seat for

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर 38

मामला क्रमांक ..... WP 4715/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

physically handicapped/disabled quota was reserved and that has already been filled-up, therefore also the petitioner is not entitled for admission.

I have perused the record.

It is an admitted position that in the CIMS 82 seats are to be filled by the medical college through PMT Examination. The schedule prepared by the respondents for admissions to various categories of students shows that only one seat has been reserved for physically handicapped / disabled quota candidates, whereas, the provisions of Section 39 of the Act of 1995 envisages that "*all Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than 3% seats for persons with disabilities.*"

In view of the above mandate of law, the respondents were duty bound to reserve not less than 3% seats for the candidates with disabilities and they cannot bypass the mandate of law. Admittedly, only one candidate has been admitted from the unreserved category against the persons with disabilities quota seat, therefore, the petitioner deserves to be considered against the person with disabilities quota seat as a Scheduled Tribe candidate.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP 4715/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the result, the petition of petitioner deserves to be allowed and it is allowed. Respondents are directed to consider the case of the petitioner for admission in M.B.B.S. course against the physically handicapped/disabled candidate seat meant for Scheduled Tribe candidate. However, if any other candidate of same class i.e. candidate of Scheduled Tribe with disabilities is above the petitioner in the merit list and he come forward and seek admission then the respondents are entitled to consider the case of that candidate in preference to the petitioner. It is also made clear that if no candidate of Scheduled Tribe with disabilities, who is above the petitioner in the merit list, comes forward for admission in M.B.B.S. course till 30.9.2005, then the respondents should consider the case of petitioner for admission in M.B.B.S. course

Before parting with this order, I would like to observe that time and again such writ petitions are being filed that appropriate seats are not being reserved for the candidates suffering with disabilities as per provisions of Section 39 of the Act of 1995. Therefore, the respondents are directed to frame a scheme for giving admissions to the candidates with disabilities in accordance with the provisions of Section 39 of the Act of 1995.

Certificate copy today.

Sd/-
L.C. Bhadoo
Judge

Roshan

SP/FS/2005 - 20,000

22.10.05 28.9.05 6.10.05